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June 1, 1993

RECEIVED

OF COUNSEL
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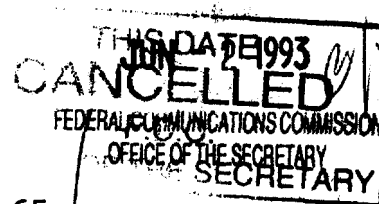
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JUN - 1 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

RECEIVED



Re: MM Docket No. 93-65
RM-6869

Dear Ms. Searcy:

On behalf of Wodlinger Broadcasting Company of Naples, Inc., enclosed herewith are an original and four copies of its **Comments and Counterproposal** in the above-captioned proceeding.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,

James A. Koerner
Counsel for
**WODLINGER BROADCASTING COMPANY
OF NAPLES, INC.**

Enclosures

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Wodlinger is presently the licensee of WIXI, operating on Channel 288A at Naples Park, Florida. In addition, Wodlinger holds a Construction Permit to operate on Channel 288C3 (File No. BPH-921125ID). Under the Counterproposal advanced herein, Wodlinger could further upgrade to Channel 288C2, utilizing its existing transmitter site, and being able to increase its coverage by nearly 30%, without any adverse public interest consequences.

Attached hereto is a Technical Exhibit prepared by Bromo Communications, Inc., demonstrating that the Counterproposal advanced herein can be implemented with minimal changes in the Commission's Table of Allotments. Specifically, the instant Counterproposal requires the substitution of Channel 282A for Channel 288A at Sarasota, Florida, and the substitution of Channel 289A for Channel 288A at Sebring, Florida.

The instant proceeding is the fourth in a series of somewhat interrelated rule making proceedings involving FM stations in Florida. The Technical Exhibit provides detailed information with regard to those proceedings (MM Docket Nos. 87-455, 89-455, and 92-195).

Implementation of the proposal advanced herein hinges upon the substitution for Channel 256A for Channel 292A at Avon Park, Florida, a substitution to which the licensee of Station WWOJ, Highlands Media Company, Inc., has already consented, without requiring reimbursement. That substitution, initially advanced in MM Docket No. 87-455, would essentially permit the Commission to terminate that six-year old proceeding. In MM Docket No. 89-455, the licensee of Station WWOJ sought to upgrade to Channel 256C3. At that point, despite the fact no action had been taken in MM Docket No. 87-455, the requested upgrade assumed the substitution.

In MM Docket No. 92-195, the Commission acknowledged the remaining matters to be settled in MM Docket No. 87-455, but

essentially settled them, although without terminating MM Docket No. 87-455. As recently as April 20, 1993, in connection with MM Docket No. 87-455, Highlands Media Company, Inc. again expressed its desire for the substitution for Channel 256A for Channel 292A at Avon Park, Florida, without reimbursement for the substitution.

Adoption of the proposal advanced herein would not only enable Wodlinger to improve the WIXI facilities, but would permit other upgrades as noted in the attached Technical Exhibit.

Respectfully submitted

WODLINGER BROADCASTING COMPANY
OF NAPLES, INC.

By 

James A. Koerner
Its Attorney

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June 1, 1993

COMMENTS AND COUNTERPROPOSAL
MM DOCKET #93-65
WODLINGER BROADCASTING OF NAPLES, INC.
SUBSTITUTE CH 288C2 FOR CH 288C3
NAPLES PARK, FLORIDA
May 1993

Technical Exhibit
TE-1

Bromo Communications, Inc.
P.O. Box M - 1331 Ocean Boulevard, Suite 201
St. Simons Island, Georgia 31522
(912) 638-5608

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COMMENTS AND COUNTERPROPOSAL
MM DOCKET #93-65
WODLINGER BROADCASTING OF NAPLES, INC.
SUBSTITUTE CH 288C2 FOR CH 288C3
NAPLES PARK, FLORIDA
May 1993

TECHNICAL STATEMENT

These comments and attached exhibits were prepared on behalf of Wodlinger Broadcasting of Naples, Inc. ("Wodlinger"), licensee of radio station WIXI, Channel 288A, Naples Park, Florida. Wodlinger also holds an outstanding permit to improve the facilities of WIXI to Channel 288C3, file #BPH-921125ID. The upgrade to C3 was ordered in MM Docket #89-469. Wodlinger, in response to the Notice of Proposed Rule Making ("Notice") in MM Docket #93-65, herein requests that Channel 288C2 be substituted for Channel 288C3 at Naples Park, Florida, and that WIXI be ordered to change Class. In order to accommodate its request, Wodlinger further asks that Channel 282A be substituted for Channel 288A at Sarasota, Florida, and that WKZM is ordered to the

~~that Channel 288C2 be substituted for Channel 288C3 at Naples Park, Florida, and that WIXI be ordered to change Class.~~

upgraded from Channel 288A to Channel 288C3. This upgrade requires the substitution of Channel 282A for Channel 288A at Sarasota, Florida. WI had also requested that Channel 288C2 is substituted for Channel 288A at New Port Richey and that WGUL-FM is ordered to change Class to C2. This request, while requiring the change of channel at Sarasota, also requires the substitution of Channel 289A for Channel 288A at Sebring, Florida. The Commission, in its Notice, referenced that the proposed channel exchange at Sebring, Florida, would be shortspaced with the licensed facilities of WWOJ, Channel 292A, Avon Park, Florida, and, therefore, declined to consider the C2 upgrade at New Port Richey. WI requested reconsideration of the Commission's action denying the request.

In order to adequately outline Wodlinger's proposal, (and WI's request for New Port Richey) and the interrelationship with Avon Park, Florida, some background in several other dockets is necessary:

RELATED MATTERS - MM Docket #87-455 & 92-195

The Commission, in referring to the shortage between Channel 289A at Sebring and Channel 292A at Avon Park, did not reference an existing proposal to change Channels at Avon Park, Florida. In MM Docket #87-455, Channel 256A was

suggested as a substitute channel for 292A. The licensee of WWOJ, Avon Park, Florida, Highlands Media Company, Inc. ("Highlands"), consented to the channel change (and at the time, a site change). The allotment of Channel 256A would enable WWOJ to operate as a 6.0 kilowatt non shortspaced Class A facility. Through five years and various pleadings, this proposed substitution has remained pending. Initially, this substitution was proposed to accommodate the upgrade of a Class A station in Holiday, Florida, to C2 on Channel 292. There were also other requests being considered in Docket #87-455, however, none were mutually exclusive with the Avon Park substitution. The initial Holiday request was denied by the Commission. A Petition for Reconsideration was filed by Holiday. Finally Holiday was considered as a new proposal in another docket (MM Docket #92-195).

In MM Docket #92-195, the Holiday facility received its upgrade, though no order requiring the Avon Park change was issued. Other stations originally involved in Docket #87-455 were also subsequently upgraded in Docket #92-195. However, the Commission took no further action in Docket #87-455 to order the substitution of Channels at Avon Park. In Report and Order Docket #92-195, the Commission did reference that two remaining matters in Docket #87-455 were yet to be resolved, specifically the Holiday upgrade and an application for review of an upgrade at Sarasota, Florida. Both of these

matters were effectively settled in Docket #92-195, the Commission noting "we will be able to expeditiously terminate MM Docket #87-455". However, the docket remains open. Highland filed, on April 20, 1993, a continuing expression of interest in changing from Channel 292A to 256A at Avon Park, Florida, not holding any station responsible to reimburse it for the channel change to 256A.

CONFLICTING USE OF CHANNEL 256

During the pendency of Docket #87-455, a new Petition for Rule Making seeking the allotment of a new Channel (255A) at Murdock, Florida, was initiated (MM Docket #89-455). During the comment period in Docket #89-455, Highlands filed a request to upgrade Channel 256A to 256C3 (a Channel 256C3 allotment at Avon Park would require a site restriction on a Murdock allotment). This upgrade request assumed that WWOJ had vested rights to the Channel 256A. Another party filed an expression of interest for Channel 256C3 at Avon Park, Florida, in response to the Public Notice of the Channel 256C3 counterproposal.

DISCUSSION SUMMARY

Since the allotment of Channel 256A at Avon Park was originally proposed two years earlier than the comments, counterproposal and expressions of interest filed in MM

Docket #89-455, and the comment period in MM Docket #87-455 had been long closed, the comments and expressions for Channel 256C3 represent late filed comments in MM Docket #87-455 and should not be considered. There appears to be no conflict which would prevent the substitution of Channel 256A at Avon Park, Florida. Highlands has reiterated its support for the change and waived any reimbursement. The change of channels at Avon Park will enable WWOJ to operate as a fully spaced 6.0 kilowatt Class A facility and it will also enable the proposed substitution of channels at Sebring, Florida (as detailed below).

Due to the complexities of the numerous rule makings which have been instituted in the state of Florida, final action of the Avon Park matter has remained pending. A denial of this channel change (in Avon Park) jeopardizes the upgrade of two existing facilities. WI filed over three years ago to upgrade WGUL-FM. The issuing of the Notice of Proposed Rulemaking (#93-65) should have awaited the final disposition of Docket #87-455, which would remove Avon Park as a stumbling block to the Sebring substitution. Wodlinger urges the Commission to conclude Docket #87-455, and if necessary, Docket #89-455, substituting Channel 256A for Channel 292A at Avon Park, Florida. While this by no means makes certain the upgrades proposed by Wodlinger (as noted below) or by WI in this instant Docket, it will provide for the potential of expanded service for numerous stations in

the state of Florida. For these reasons, Wodlinger assumes that WWOJ, Avon Park, Florida, for the purposes of this request, to be on Channel 256A.

PROPOSAL

Wodlinger herein requests that Channel 288C2 be substituted for Channel 288C3 at Naples Park, Florida at reference coordinates North Latitude 26° 19' 00" and West Longitude 81° 47' 13". This is the presently authorized site for WIXI, Channel 288A (and is the site specified in BPH-921125ID). From this location, Naples Park will receive in excess of a 3.16 mV/m signal. Exhibit #1 is a \$73.207 spacing study which shows that Channel 288C2 at Naples Park meets the Commission's minimum distance separation requirement towards all other licensed, applied for or proposed facilities (assuming that the changes at Sarasota and Sebring are made, as described below).

Channel 282A can be substituted for Channel 288A at Sarasota, Florida at coordinates North Latitude 27° 16' 30" and West Longitude 82° 28' 54". These are the same coordinates as proposed in the Commission's Notice and is the present authorized construction permit site for WKZM. The licensee of WKZM has already consented to the change of channels at Sarasota. ¹ Attached as Exhibit #2 is a \$73.207

1) WGUL-FM has an agreement with the licensee of WKZM for the reimbursement of expenses to make the necessary channel change at Sarasota, Florida. Wodlinger states it will, if necessary, assist WGUL-FM in that reimbursement.

spacing study for Channel 282A at Sarasota, which demonstrates compliance with the Commission's minimum distance separation requirements. Coverage of Sarasota with a 3.16 mV/m contour will remain unchanged from this site on Channel 282A and may actually be improved since Channel 282A can operate as a 6.0 kilowatt Class A from this site. ²

Channel 289A can be substituted for Channel 288A at Sebring, Florida, at reference coordinates North Latitude 27° 26' 25" and West Longitude 81° 27' 00". This represents a site restriction of 6.2 kilometers south-southwest from the community. In order for the channel change to occur, WCAC must relocate its transmitter site. The licensee of WCAC has already consented to the site change. ³ Exhibit #3 is a usable area study for Channel 289A at Sebring, Florida. Exhibit #4 is a §73.207 spacing study for Channel 289A at Sebring, Florida (both exhibits assume WWOJ on Channel 256A at Avon Park, Florida).

Therefore, Wodlinger requests the following amendment to §73.202(b) of the Commission's rules:

- 2) It is the understanding of Wodlinger that the licensee of WKZM will propose a C3 upgrade on Channel 282 in this instant proceeding.
- 3) WGUL-FM has an agreement with the licensee of WCAC for the reimbursement of expenses to make the necessary channel change at Sebring, Florida. Wodlinger states it will, if necessary, assist WGUL-FM in that reimbursement.

Naples Park, Florida

Present

288C3

Proposed

288C2

Sarasota, Florida

Present

273C, 288A

Proposed

273C, 282A ⁴
293C2

Sebring, Florida

Present

288A

Proposed

289A ⁵

PUBLIC INTEREST ASPECTS

Additionally, the counterproposal to be filed by WGUL, Inc., (which Wodlinger understands will be submitted to the Commission during this comments period in the Docket) would potentially allow WGUL to upgrade to a C1 facility, thus dramatically improving the coverage of that station. ⁶

This technical statement was prepared on behalf of Wodlinger Broadcasting of Naples, Inc., by Bromo Communications, Inc., its technical consultant. All of the information contained herein is true and accurate to the best of our belief and knowledge. All data relating to FM facilities and proposals was extracted from the NTIA database. We assume no liability for omissions or errors in that database which may be adverse to these proposals.

6) The Wodlinger proposal is not mutually exclusive with the change at New Port Richey.

ALLOCATION STUDY FOR CHANNEL 288C2 NAPLES PARK, FLORIDA
USING PRESENT WIXI SITE AS REFERENCE

REFERENCE	CLASS C2	DISPLAY DATES
26 19 00 N	Current rules spacings	DATA 04-29-93
81 47 13 W	CHANNEL 288 -105.5 MHz	SEARCH 05-28-93

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)

WIXI.C 288C3	Naples Park	FL	0.0	0.00	177.0	-177.00	
CP ZCN	26 19 00 81 47 13	7.100 kW	181M	0.0	110.0		
Wodlinger Broadcasting of Naples, Inc. BPH9211251D							
>From Channel 288A Per D89-469							
WIXI 288A	Naples Park	FL	0.0	0.00	166.0	-166.00	
LI CN	26 19 00 81 47 13	0.950 kW	178M	0.0	103.2		
Wodlinger Broadcasting of Naples, Inc. BLH861104KB							
* WKZM.C 288A	Sarasota	FL	327.0	126.67	166.0	-39.33	
CP ZCN	27 16 30 82 28 54	3.000 kW	100M	78.7	103.2		
Christian Fellowship Mission, Inc. BPH8909291F							
Proposed to move to Channel 282A							
* WKZM 288A	Sarasota	FL	329.0	130.15	166.0	-35.85	
LI HN	27 19 25 82 27 40	3.000 kW	55M	80.9	103.2		
Christian Fellowship Mission, BLH6432							
Proposed to move to Channel 282A							
* WCAC.C 288A	Sebring	FL	16.7	131.52	166.0	-34.48	
CPM CN	27 27 13 81 24 23	3.000 kW	100M	81.7	103.2		
Roper Broadcasting, Inc. BMPH920903JZ							
Proposed to move to Channel 289A							
* WCAC 288A	Sebring	FL	14.7	131.90	166.0	-34.10	
LI HN	27 28 06 81 27 03	3.000 kW	46M	82.0	103.2		
Roper Broadcasting, Inc. BLH4041							
Proposed to move to Channel 289A							
AD289	289C3 Sebring	FL	15.6	117.91	117.0	0.91	
AD	27 20 30 81 28 05	0.000 kW	OM	73.3	72.7		
Roper Broadcasting, Inc.							
WKKB.C 288C2	Key Colony Beach	FL	159.0	191.05	190.0	1.05	
CP CN	24 42 25 81 06 17	50.000 kW	84M	118.7	118.1		
Richard L. Silva BPH92080 3JO							
AD288	288C1 New Port Richey	FL	335.0	228.33	224.0	4.33	
AD	28 11 04 82 45 39	0.000 kW	OM	141.9	139.2		
WGUL, Inc.							

ALLOCATION STUDY CHANNEL 288C2

* NOTE : WKZM SARASOTA, FLORIDA AND WCAC SEBRING, FLORIDA ARE TO CHANGE TO CHANNELS 282A AND 289A RESPECTIVELY.

NOTE : THIS PROPOSAL IS CLEAR OF CH 288C1 AT NEW PORT RICHEY, FL.

EXHIBIT #1

**COMMENTS & COUNTERPROPOSAL
MM DOCKET #93-65
WODLINGER BCG NAPLES, INC
SUB CH 288C2 FOR CH 288C3
NAPLES PARK, FLORIDA**

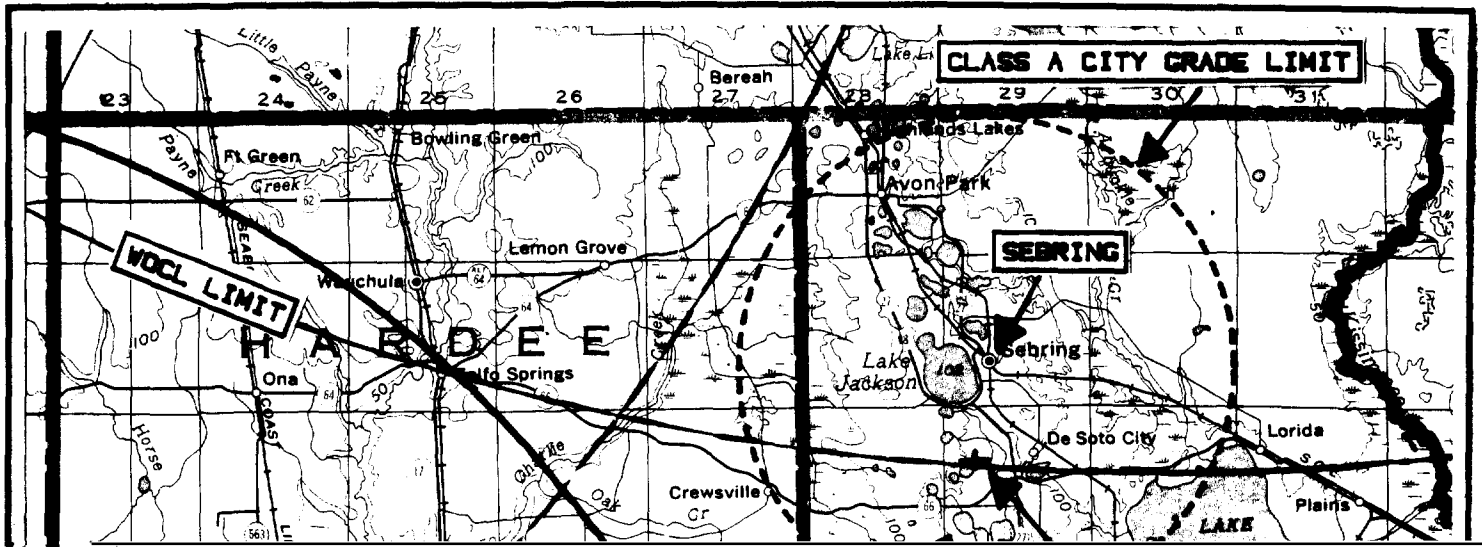
May 1993

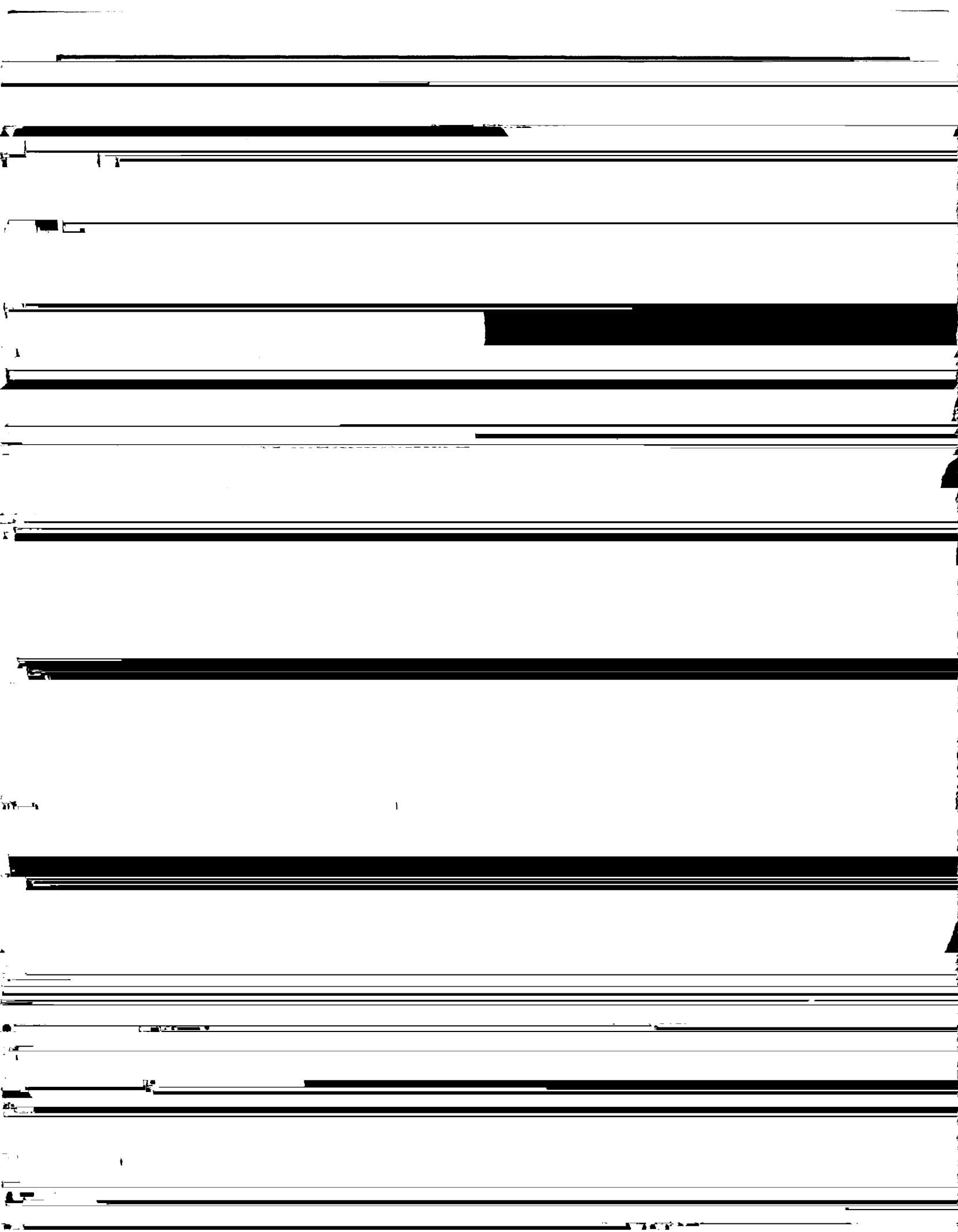
BROMO COMMUNICATIONS
BROADCAST TECHNICAL CONSULTANTS
St Simons Island, Georgia Washington, D.C.

ALLOCATION STUDY FOR CHANNEL 282A SARASOTA, FLORIDA
USING WKZM CP SITE AS REFERENCE

REFERENCE	CLASS A	DISPLAY DATES
27 16 30 N		DATA 04-29-93
82 28 54 W	Current rules spacings	SEARCH 05-28-93
----- CHANNEL 282 -104.3 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD282	282A	Sarasota	FL	0.0	0.00	115.0	-115.00
AD	27 16 30	82 28 54	0.000 kW	0M	0.0	71.5	
	WGUL-FM, Inc.				RM6869		890601
>PRM-Construction Permit Site							
WRBQFM	284C1	Tampa	FL	1.7	74.52	75.0	-0.48
LI CN	27 56 50	82 27 35	100.000 kW	171M	46.3	46.6	
	Edens Broadcasting, Inc.				BLH6052		





AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

State of Georgia)
St. Simons Island)
County of Glynn)

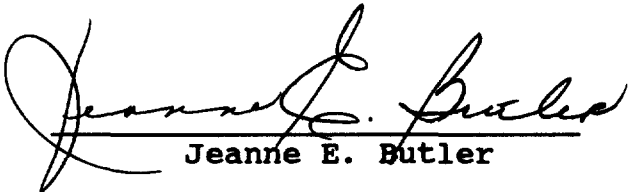
ss:

JEFFERSON G. BROCK being duly sworn, deposes and says that

CERTIFICATE OF SERVICE

I, Jeanne E. Butler, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing COMMENTS & COUNTERPROPOSAL were sent this 1st day of June, 1993, via first class mail, postage prepaid to the following:

Irving Gastfreund, Esquire
Kaye, Scholer, Fierman, Hays & Handler
901 15th Street, N. W., Suite 1100
Washington, D. C. 20005


Jeanne E. Butler